

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

3. On June 7, 2007, Respondent filed a motion to dismiss, alleging that the Commission lacked jurisdiction over the instant case since it did not employ 15 or more persons during the twenty calendar weeks prior to the alleged violation.

4. On October 7, 2007, an Order was entered, which held in abeyance the motion to dismiss and provided Complainant with an opportunity to serve Respondent with written discovery to ascertain Respondent's employment records to verify one way or the other whether Respondent had the requisite number of employees required under section 2-101(B)(1)(a).

5. On April 8, 2009, an Order was entered that denied without prejudice Respondent's motion to dismiss after noting that the affidavit supporting the motion to dismiss failed to track the language of section 2-101(B)(1)(a) that defined employers as employing 15 or more employees during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.

6. On May 6, 2009, Respondent filed another motion to dismiss, again alleging that it was not an employer as defined under section 2-101(B)(1)(a).

7. Complainant has not filed a response to Respondent's motion to dismiss although the time for doing so has expired.

8. Respondent's evidentiary submissions indicate that it did not employ 15 or more employees at any time during 2005 and 2006.

Conclusions of Law

1. Complainant is an individual claiming to be aggrieved by a violation of the Human Rights Act.

2. The Commission has jurisdiction over the parties for the purpose of determining whether it has jurisdiction over the subject matter of the Complaint.

3. An "employer" is defined as any person employing fifteen or more employees within Illinois during twenty or more calendar weeks within either the calendar year of the alleged violation or the calendar year immediately preceding the year of the alleged violation.

4. The Commission lacks jurisdiction over the instant Complaint since Respondent did not employ fifteen or more individuals at anytime during 2005 or 2006, when the alleged violation took place.

Determination

The Commission lacks jurisdiction over the instant Complaint because Respondent is not an "employer" as defined under section 2-101(B)(1)(a), and Complainant has not shown how Respondent would be an employer under any other section of the Human Rights Act.

Discussion

In its motion to dismiss, Respondent asserts that the Commission does not have jurisdiction over this matter because Respondent did not employ fifteen or more employees within Illinois during the relevant time period. In order for this Respondent to be considered a covered "employer" in an age discrimination claim under the Human Rights Act, it must have employed fifteen or more employees within Illinois during twenty or more weeks within either the calendar year of the alleged violation or the calendar year immediately preceding the year of the alleged violation. (See, 775 ILCS 5/2-101(B)(1)(a).) The Complaint alleges that Respondent committed the adverse act in 2006. Thus, the relevant calendar years are 2005 and 2006.

In its motion to dismiss, Respondent asserts through an affidavit that it did not employ fifteen or more employees for either 2005 or 2006. While Respondent did not specifically identify any of its employees or set forth the dates of their employment for either year, Complainant has not filed a response or otherwise contested Respondent's allegation that it did not have sufficient employees to be considered a covered employer under the Human Rights Act. Because the undisputed facts in the record show that Respondent did not employ enough employees in order to meet the definition of an "employer" under the Human Rights Act, I find that Respondent is entitled to an Order recommending that this case be dismissed for lack of jurisdiction.

Finally, I note in passing that the Commission in *Jones and Burlington Northern Railroad*, 25 Ill. HRC Rep. 101, 102 (1986) indicated that it would not search the record to find a reason to deny a dispositive motion if the motion appeared valid on its face. In the instant case, the holding in *Jones* should apply with equal force since Complainant has not contested any of

the factual assertions made by Respondent in the instant motion or otherwise explained how Respondent meets the jurisdictional definition of an "employer" in spite being given an ample opportunity to conduct discovery and to put forth any relevant facts that could have disputed Respondent's motion.

Recommendation

For all of the above reasons, it is recommended that that Respondent's motion to dismiss the instant case due to a lack of subject matter jurisdiction be **granted**, and that the Complaint and underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 20TH DAY OF JANUARY, 2010